

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE NO. 2 FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 481
92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR DOLAN.

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TERRY L. SPIELER, Secretary.

1166S.20P

AN ACT

To repeal sections 21.795, 144.062, and 226.030, RSMo, and to enact in lieu thereof seven new sections relating to accountability measures governing the operations of the department of transportation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 21.795, 144.062, and 226.030, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 21.795, 144.062, 226.030, 226.033, 226.096, 1, and 2, to read as follows:

21.795. 1. There is established a permanent joint committee of the general assembly to be known as the "Joint Committee on Transportation Oversight" to be composed of seven members of the standing transportation committees of both the senate and the house of representatives and three nonvoting ex officio members. The senate members of the joint committee shall be appointed by the president pro tem of the senate and the house members shall be appointed by the speaker of the house of representatives. No major party shall be represented by more than four members from the house of representatives nor more than four members from the senate. The ex officio members shall be the state auditor, the director of the oversight division of the committee on legislative research, and the commissioner of the office of

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

administration or the designee of such auditor, director or commissioner. The joint committee shall be chaired jointly by both chairs of the senate and house transportation committees. A majority of the committee shall constitute a quorum, but the concurrence of a majority of the members, other than the ex officio members, shall be required for the determination of any matter within the committee's duties.

2. The joint committee on transportation oversight shall appoint a director of the joint committee and may employ other personnel as it deems necessary. The compensation of the director and other personnel shall be paid from the joint contingent fund or jointly from the senate and house joint contingent funds until an appropriation is made therefor. The joint committee director initially appointed pursuant to this section shall take office January 1, 2004, for a term ending June 30, 2005. Subsequent joint committee on transportation oversight directors shall be appointed for five year terms, beginning July 1, 2005. The joint committee on transportation oversight director may be removed by a two-thirds majority vote of the joint committee for cause. Any joint committee on transportation oversight director whose term is expiring shall be eligible for reappointment. The director of the joint committee on transportation oversight shall:

(1) Be qualified by training and or experience in transportation policy, management of transportation organizations, accounting, auditing, financial analysis, law, management analysis, or public administration. In addition, the director shall have experience and general knowledge of the construction, maintenance, planning, and building of roads and bridges and possess an overall understanding of other modes of transportation including the operations of airports, water ports, transit, and railroads;

(2) Report to and be under the general supervision of the joint committee. The joint committee on transportation oversight shall by a majority vote, direct the director to perform specific investigations, reviews, audits, or other studies of the state department of transportation, in which instance the director shall report the findings and recommendations directly to the joint committee on transportation oversight. All investigations, reviews, audits, or other studies performed by the director shall be conducted so that the general assembly can procure information to assist it in formulating transportation legislation and policy for this state;

(3) Receive and process citizen complaints relating to transportation issues. The director shall, on a quarterly basis, submit a written complaint report to the joint committee on transportation oversight and the highways and transportation commission. The complaint report shall contain the date, time, nature of the complaint, and any immediate facts and circumstances surrounding the initial report

of the complaint. The director shall investigate a citizen complaint if he or she is directed to do so by a majority of the joint committee on transportation oversight;

(4) Investigate complaints from current and former employees of the department of transportation if the director receives information from an employee which shows:

- (a) The department is violating a law, rule, or regulation;
- (b) Gross mismanagement by department officers;
- (c) Waste of funds by the department; or
- (d) That the department is engaging in activities which pose a danger to public health and safety;

(5) Maintain confidentiality with respect to all matters and the identities of the complainants or witnesses coming before the director except insofar as disclosures may be necessary to enable the director to carry out duties and to support recommendations.

[2.] 3. The department of transportation shall submit a written report prior to November tenth of each year to the governor and every member of the senate and house of representatives which shall contain the following:

(1) A comprehensive financial report of all funds for the preceding state fiscal year which shall include a report by independent certified public accountants, selected by the commissioner of the office of administration, attesting that the financial statements present fairly the financial position of the department in conformity with generally accepted government accounting principles. This report shall include amounts of:

(a) State revenues by sources, **including all new state revenue derived from highway users which results from action of the general assembly or voter-approved measures taken after August 28, 2003, and projects funded in whole or in part from such new state revenue, and** amounts of federal revenues by source;

(b) Any other revenues available to the department by source;

(c) Funds appropriated, the amount the department has budgeted and expended for the following: contracts, right-of-way purchases, preliminary and construction engineering, maintenance operations and administration;

(d) Total state and federal revenue compared to the revenue estimate in the fifteen-year highway plan as adopted in 1992.

All expenditures made by, or on behalf of, the department for personal services including fringe benefits, all categories of expense and equipment, real estate and capital improvements shall be assigned to the categories listed in this subdivision in conformity with generally accepted government accounting principles;

(2) A detailed explanation of the methods or criteria employed to select construction

projects, including a listing of any new or reprioritized projects not mentioned in a previous report, and an explanation as to how the new or reprioritized projects meet the selection methods or criteria;

(3) The proposed allocation and expenditure of moneys and the proposed work plan for the current fiscal year, at least the next four years, and for any period of time expressed in any public transportation plan approved by either the general assembly or by the voters of Missouri. This proposed allocation and expenditure of moneys shall include the amounts of proposed allocation and expenditure of moneys in each of the categories listed in subdivision (1) of this subsection;

(4) The amounts which were planned, estimated and expended for projects in the state highway and bridge construction program or any other projects relating to other modes of transportation in the preceding state fiscal year and amounts which have been planned, estimated or expended by project for construction work in progress;

(5) The current status as to completion, by project, of the fifteen-year road and bridge program adopted in 1992. The first written report submitted pursuant to this section shall include the original cost estimate, updated estimate and final completed cost by project. Each written report submitted thereafter shall include the cost estimate at the time the project was placed on the most recent five-year highway and bridge construction plan and the final completed cost by project;

(6) The reasons for cost increases or decreases exceeding five million dollars or ten percent relative to cost estimates and final completed costs for projects in the state highway and bridge construction program or any other projects relating to other modes of transportation completed in the preceding state fiscal year. Cost increases or decreases shall be determined by comparing the cost estimate at the time the project was placed on the most recent five-year highway and bridge construction plan and the final completed cost by project. The reasons shall include the amounts resulting from inflation, department-wide design changes, changes in project scope, federal mandates, or other factors;

(7) Specific recommendations for any statutory or regulatory changes necessary for the efficient and effective operation of the department;

(8) An accounting of the total amount of state, federal and earmarked federal highway funds expended in each district of the department of transportation; and

(9) Any further information specifically requested by the joint committee on transportation oversight.

[3.] 4. Prior to December first of each year, the committee shall [meet] **hold an annual meeting** and call before its members, officials or employees of the state highways and transportation commission or department of transportation, as determined by the committee, for the sole purpose of receiving and examining the report required pursuant to subsection [2] 3 of

this section. **The joint committee may also call before its members at the annual meeting, the director of the joint committee on transportation oversight for purposes authorized in this section.** The committee shall not have the power to modify projects or priorities of the state highways and transportation commission or department of transportation. The committee may make recommendations to the state highways and transportation commission or the department of transportation. Disposition of those recommendations shall be reported by the commission or the department to the joint committee on transportation oversight.

5. In addition to the annual meeting required by subsection 4 of this section, the committee shall meet four times each year. The co-chairs of the committee shall establish an agenda for each meeting that may include, but not be limited to, the following items to be discussed with the committee members throughout the year during the quarterly meeting:

- (1) Presentation of a prioritized plan for all modes of transportation;**
- (2) Discussion of department efficiencies and expenditure of cost-savings within the department;**
- (3) Presentation of a semiannual accountability report;**
- (4) Presentation of a status report on department of transportation revenues and expenditures, including a detailed summary of projects funded by new state revenue as provided in paragraph (a) of subdivision (1) of subsection 3 of this section;**
- (5) Review of any report from the joint committee director; and**
- (6) Implementation of any actions as may be deemed necessary by the committee as authorized by law.**

The co-chairs of the committee may call special meetings of the committee with ten days' notice to the members of the committee, the transportation inspector general, and the department of transportation.

[4.] **6.** The committee shall submit records of its meetings to the secretary of the senate and the chief clerk of the house of representatives in accordance with sections 610.020 and 610.023, RSMo.

144.062. 1. With respect to exempt sales at retail of tangible personal property and materials for the purpose of constructing, repairing or remodeling facilities for: (1) a county, other political subdivision or instrumentality thereof exempt from taxation under subdivision (10) of section 39 of article III of the Constitution of Missouri; or (2) an organization sales to which are exempt from taxation under the provisions of subdivision (19) of subsection 2 of section 144.030; or (3) any institution of higher education supported by public funds or any private not-for-profit institution of higher education, exempt from taxation under subdivision (20) of subsection 2 of section 144.030; or (4) any private not-for-profit elementary or secondary school

exempt from taxation under subdivision (22) of subsection 2 of section 144.030, **or (5) the department of transportation**, hereinafter collectively referred to as exempt entities, such exemptions shall be allowed for such purchases if the purchases are related to the entities' exempt functions and activities. In addition, the sales shall not be rendered nonexempt nor shall any material supplier or contractor be obligated to pay, collect or remit sales tax with respect to such purchases made by or on behalf of an exempt entity due to such purchases being billed to or paid for by a contractor or the exempt entity contracting with any entity to render any services in relation to such purchases, including but not limited to selection of materials, ordering, pickup, delivery, approval on delivery, taking of delivery, transportation, storage, assumption of risk of loss to materials or providing warranties on materials as specified by contract, use of materials or other purchases for construction of the building or other facility, providing labor, management services, administrative services, design or technical services or advice to the exempt entity, whether or not the contractor or other entity exercises dominion or control in any other manner over the materials in conjunction with services or labor provided to the exempt entity.

2. When any exempt entity contracts for the purpose of constructing, repairing or remodeling facilities, and purchases of tangible personal property and materials to be incorporated into or consumed in the construction of the project are to be made on a tax-exempt basis, such entity shall furnish to the contractor an exemption certificate authorizing such purchases for the construction, repair or remodeling project. The form and content of such project exemption certificate shall be approved by the director of revenue. The project exemption certificate shall include but not be limited to:

- (1) The exempt entity's name, address, Missouri tax identification number and signature of authorized representative;
- (2) The project location, description, and unique identification number;
- (3) The date the contract is entered into, which is the earliest date materials may be purchased for the project on a tax-exempt basis;
- (4) The estimated project completion date; and
- (5) The certificate expiration date.

Such certificate is renewable for a given project at the option of the exempt entity, only for the purpose of revising the certificate expiration date as necessary to complete the project.

3. The contractor shall furnish the certificate prescribed in subsection 2 of this section to all subcontractors, and any contractor purchasing materials shall present such certificate to all material suppliers as authorization to purchase, on behalf of the exempt entity, all tangible personal property and materials to be incorporated into or consumed in the construction of that project and no other on a tax-exempt basis. Such suppliers shall execute to the purchasing contractor invoices bearing the name of the exempt entity and the project identification number. Nothing in this section shall be deemed to exempt the purchase of any construction

machinery, equipment or tools used in constructing, repairing or remodeling facilities for the exempt entity. All invoices for all personal property and materials purchased under a project exemption certificate shall be retained by the purchasing contractor for a period of five years and shall be subject to audit by the director of revenue.

4. Any excess resalable tangible personal property or materials which were purchased for the project by a contractor under a project exemption certificate but which were not incorporated into or consumed in the construction of the project shall either be returned to the supplier for credit or the appropriate sales or use tax on such excess property or materials shall be reported on a return and paid by such contractor not later than the due date of the contractor's Missouri sales or use tax return following the month in which it was determined that the materials were not to be used in the project.

5. No contractor or material supplier shall, upon audit, be required to pay tax on tangible personal property and materials incorporated into or consumed in the construction of the project, due to the failure of the exempt entity to revise the certificate expiration date as necessary to complete any work required by the contract. If it is determined that tax is owed on such property and materials due to the failure of the exempt entity to revise such certificate expiration date, the exempt entity shall be liable for the tax owed.

6. If an entity issues exemption certificates for the purchase of tangible personal property and materials which are incorporated into or consumed in the construction of its project and such entity is found not to have had the authority granted by this section to issue such exemption certificates, then such entity shall be liable for the tax owed on such personal property and materials. In addition, if an entity which does have the authority granted by this section to issue exemption certificates issues such certificates for the purchase of tangible personal property and materials which are incorporated into or consumed in the construction of a project, or part of a project, which is found not to be related to such entity's exempt functions and activities, then such entity shall be liable for the tax owed on such personal property and materials.

226.030. 1. The state highways and transportation commission shall consist of six members, who shall be appointed by the governor, by and with the advice and consent of the senate[.]. Not more than three [thereof to be] members **of the commission shall be** of the same political party.

2. Each commissioner shall be a taxpayer and resident of **the state of Missouri** for at least five years **immediately** prior to [his] appointment. [Any commissioner may be removed by the governor if fully satisfied of his inefficiency, neglect of duty, or misconduct in office. All commissioners appointed prior to October 13, 1965, shall serve the term for which they were appointed.]

3. Commissioners appointed pursuant to this section shall be appointed for terms of six years, **except as otherwise provided in this subsection, which terms shall begin on the**

first day of December in odd-numbered years provided that no more than two members' terms shall be scheduled to expire in the same year and the terms of members who are of the same political party shall not be scheduled to expire in the same year. [Upon the expiration of each of the foregoing terms of these commissioners a successor shall be appointed for a term of six years or until his successor is appointed and qualified which term of six years shall thereafter be the length of term of each member of the commission unless removed as above provided.] **The present members of the commission may serve as members for the remainder of the scheduled terms for which they were appointed. The successors to the commissioners whose terms expire on December 1, 2003, shall be appointed for terms which shall expire on December 1, 2009. The successor to the commissioner whose term expires on December 1, 2005, shall be appointed for a term which shall expire on December 1, 2011. The successor to one of the commissioners whose term expires on October 13, 2007, shall be appointed for a term which shall expire on December 1, 2011. The successor to the other commissioner whose term expires on October 13, 2007, shall be appointed for a term which shall expire on December 1, 2013. The successor to the other commissioner whose term expires on December 1, 2007, shall be appointed for a term which shall expire on December 1, 2013.**

4. A member shall serve until a successor is appointed and qualified. If at any point a member is required to holdover and continue to serve past the scheduled expiration date of their term because a successor has not been appointed and qualified, then at such time as a successor has been appointed and qualified, such successor's term shall expire six years from the originally scheduled expiration date of the holdover member's term. If a vacancy occurs in any term of a commissioner due to death, resignation, or removal, a successor shall be appointed for only the remainder of the unexpired term.

5. All members of the commission shall, before entering upon the duties of a member of the commission, take and subscribe to an oath or affirmation to support the constitution and laws of the United States and of this state, and to faithfully and honestly discharge the duties of such office.

6. At the first regular meeting in January of each year, the members of the commission shall elect by secret ballot a member as chair and another member as vice chair of the commission, each of whom shall hold their respective offices until their successors are elected. The chair and vice chair shall not be members of the same political party.

7. The members of the commission shall receive as compensation for their services twenty-five dollars per day for the time spent in the performance of their official duties, and also their necessary traveling and other expenses incurred while actually engaged in the discharge

of their official duties.

8. Any commissioner may be removed from office by the governor if fully satisfied of the commissioner's inefficiency, neglect of duty, or misconduct in office.

226.033. 1. A commission member, during his or her tenure, shall not:

(1) Personally solicit political contributions on behalf of the candidacy of any candidate for any public office;

(2) Allow his or her official title to be used in connection with political fundraising activities;

(3) Solicit, accept, or receive political contributions;

(4) Organize, sell tickets to, promote, or actively participate in a fundraising activity of a candidate for partisan political office or of a political party or partisan political group;

(5) Take an active part in managing the political campaign of a candidate for partisan political office or a candidate for political party office; or

(6) Endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material.

2. If a commission member engages in any of the activities set forth in subsection 1 of this section, such activity shall be considered misconduct pursuant to section 226.030. If the governor finds that the commissioner's involvement in such activities affects the commissioner's ability to carry out his or her official duties in a nonpartisan manner, the governor may remove the offending commissioner from the commission.

226.096. 1. Any controversy or claim to which the Missouri department of transportation is a party that arises out of or relates to a contract awarded pursuant to subdivision (9) of subsection 1 of section 226.130, and the claim exceeds twenty-five thousand dollars, shall upon written demand by any party, be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, except as provided in this section. The highway and transportation commission shall promulgate rules pursuant to chapter 536, RSMo, to become effective on or before July 1, 2004, establishing a method for appointment of arbitrators and allowing for the mediation of claims upon agreement of both parties. Judgment upon awards so rendered shall be entered in the circuit court of Cole County, Missouri.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo,

are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

Section 1. The position of inspector general, as it exist as of January 1, 2003, shall be a permanent position within the department of transportation. Any person holding the position of inspector general may appeal his or her dismissal to the highways and transportation commission; such dismissal shall be upheld by the commission unless a majority of such body determines otherwise.

Section 2. In a condemnation case where there are multiple ownership interests in the property proposed for condemnation, the circuit court shall separate the trust fund into the respective ownership interests.

Unofficial

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